The ethics of facial recognition technologies, surveillance, and accountability in an age of artificial intelligence: a comparative analysis of US, EU, and UK regulatory frameworks

Abstract

The rapid development of facial recognition technologies (FRT) has led to complex ethical choices in terms of balancing individual privacy rights versus delivering societal safety. Within this space, increasingly commonplace use of these technologies by law enforcement agencies has presented a particular lens for probing this complex landscape, its application, and the acceptable extent of citizen surveillance. This analysis focuses on the regulatory contexts and recent case law in the United States (USA), United Kingdom (UK), and European Union (EU) in terms of the use and misuse of FRT by law enforcement agencies. In the case of the USA, it is one of the main global regions in which the technology is being rapidly evolved, and yet, it has a patchwork of legislation with less emphasis on data protection and privacy. Within the context of the EU and the UK, there has been a critical focus on the development of accountability requirements particularly when considered in the context of the EU's General Data Protection Regulation (GDPR) and the legal focus on Privacy by Design (PbD). However, globally, there is no standardised human rights framework and regulatory requirements that can be easily applied to FRT rollout. This article contains a discursive discussion considering the complexity of the ethical and regulatory dimensions at play in these spaces including considering data protection and human rights frameworks. It concludes that data protection impact assessments (DPIA) and human rights impact assessments together with greater transparency, regulation, audit and explanation of FRT use, and application in individual contexts would improve FRT deployments. In addition, it sets out ten critical questions which it suggests need to be answered for the successful development and deployment of FRT and AI more broadly. It is suggested that these should be answered by lawmakers, policy makers, AI developers, and adopters.